United Nations A/HRC/36/56

General Assembly

Distr.: General
7 August 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 5
Human rights bodies and mechanisms

Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned — 2007-2017

Report of the Expert Mechanism on the Rights of Indigenous Peoples

GE.17-13467(E)

1713467

Please recycle

Contents

		Page
I.	Introduction	3
II.	Summary	3
III.	International bodies implementing the Declaration	5
	A. United Nations Treaty bodies and special procedures	5
	B. Universal periodic review	8
	C. Regional mechanisms	10
	D. United Nations agencies and other multilateral actors	12
IV.	Domestic courts and national bodies	14
V.	New regional instruments and agreements on indigenous rights	17

I. Introduction

1. In September 2016, in its resolution 33/25, the Human Rights Council amended and expanded the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and decided that it should identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, including through reports to the Human Rights Council on the matter.

2. The present report is the first to be submitted in the context of that decision. It is intended to highlight the main legal and policy trends in the past 10 years in the application of the Declaration across the United Nations and regional and national human rights systems, and to contribute to its further implementation. It is not intended to be a comprehensive study on good practices, many of which are also reflected in the thematic studies of the Expert Mechanism.

II. Summary

3. The Declaration is the most far-reaching comprehensive instrument concerning indigenous peoples, elaborated and approved as a result of a process of nearly three decades of active engagement of indigenous leaders within the United Nations system. Since its adoption by the General Assembly on 13 September 2007, it has been overwhelmingly recognized as reflecting a global consensus on the rights of indigenous peoples, individually and collectively. The question remains as to the extent to which it is being implemented.

4. The Declaration informs the work of a variety of different actors, such as States, indigenous peoples and the different United Nations agencies, the World Bank and procedures within the United Nations system. For the past 10 years, it has influenced the drafting of constitutions and statutes at the national and subnational levels[1] and contributed to the progressive development of international and domestic laws and policies as it applies to indigenous peoples. The Declaration is reflected in the Constitutions of Ecuador, Kenya and the Plurinational State of Bolivia, drafted in 2008, 2010 and 2009, respectively. Importantly, in its article 11, the Constitution of Ecuador recognizes that the human rights established in international instruments, including not only treaties but also the Declaration, are directly applicable and enforceable.

5. Despite the advances made in terms of their formal recognition, indigenous peoples still report numerous and growing violations of their human rights. In many examples, indigenous peoples are denied political recognition by States and international actors, protection of their lands, territories, resources and environment, particularly from development activities, consultation and free, prior and informed consent between them, States and others regarding activities that affect them, and the protection of their cultures, including their languages, religions and ways of life. Indigenous women and disabled persons face particular challenges. Of further concern is the rise in the number of indigenous people who die every year while attempting to defend their rights under the Declaration.[2] Indigenous people are also subjected to daily violent attacks and threats, enforced disappearances, illegal surveillance, travel bans and the increasing trend of

[1] See, for example, the Constitution of Mexico City.

[2] Of the 281 human rights defenders killed in 25 countries in 2016, almost half had been defending their land, environment and indigenous rights. There were 185 documented killings of human rights defenders in 2015 and 130 in 2014. An illustrative case is that of Berta Cáceres, leader of the Lenca people of Honduras, who was killed in 2016 allegedly in connection with her involvement and opposition to the Agua Zarca hydroelectric project. Her daughter Bertha Zúñiga was also targeted in an armed attack in June 2017. See Front line Defenders "Annual Report on Human Rights Defenders at Risk in 2016", available from https://frontlinedefenders.org/front-line-defenders-017-annual-report-highlights-killing-of-281-hrds-in-2016.

criminalizing indigenous activists and organizations and movements, often engendered by conflicts over investment projects in indigenous territories.[1]

6. In 2016, in a movement emblematic of such conflicts around the world, thousands of indigenous peoples gathered to protest the construction of an oil pipeline over the treaty-guaranteed traditional lands of the Standing Rock and Cheyenne River Sioux tribes in North Dakota, United States of America. The project had been permitted by the Government despite the objections of the indigenous peoples in question and in the absence of meaningful consultation, with significant harm to the tribes' sacred sites and risks to its drinking water.[2] The situation, along with indigenous peoples' expressions of concern during the tenth session of the Expert Mechanism on natural resource development on indigenous lands across the world without their consent, was a significant factor in the decision by the Expert Mechanism to devote its 2018 thematic report to the issue of free, prior and informed consent, not only in the context of natural resource development, but also with respect to other State and industry activities that affect indigenous peoples' rights to land and culture, as well as legislative and restitution measures that affect them, as specified in the Declaration.

7. In the light of ongoing challenges, much more can be done to realize the true potential of the Declaration, through enhanced implementation of its provisions. The Declaration reaffirms and clarifies international human rights standards to ensure respect for indigenous peoples' rights to self-determination, cultural, language, land, natural resources, environmental protection, consultation and free prior and informed consent. Thus, recommendations and observations to States — by United Nations agencies, treaty bodies, the Permanent Forum on Indigenous Issues, special procedures of the Human Rights Council, such as the Special Rapporteurs,[3] working groups and under the universal periodic review mechanism — seeking the implementation of Declaration rights should be implemented.

8. An overview of such recommendations, as well as good practices, will serve as the basis for an analysis of the status of implementation of the Declaration [...by...] and also serve to inform the implementation of the new mandate of the Expert Mechanism as to the choice of thematic studies, definition of priorities for country engagement and other undertakings toward achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples.

9. Many scholars consider that, apart from its solemn and aspirational nature, the Declaration has significant normative weight, having been formally endorsed by the majority of States Members of the United Nations.[4] As a form of international law, the Declaration may be used by courts when attempting to construe the meaning of treaties, statutes and other legal instruments. It is well established that General Assembly resolutions that declare norms can build on or reflect customary international law.[5] The declaration

[1] Such as the prosecution of defenders of the Mapuche people under anti-terrorist laws in Chile for which Chile was held liable in 2014 by the Inter-American Court of Human Rights. See [illegible] or [illegible] 279_esp.pdf.

[2] When the protestors camped out and joined forces to stop bulldozers from razing burial sites, law enforcement attacked the protestors using dogs, crowd-control spray, freezing water and rubber bullets. Dozens of people were arrested and imprisoned for asserting and protecting their rights to free speech and assembly, and to self-determination, property, natural resources, equality, treaty rights, religious freedoms, cultural expression and free prior and informed consent. See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21277&LangID=E.

[3] Including the Special Rapporteur on the rights of indigenous peoples, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on the situation of human rights defenders, in the field of cultural rights, and on the rights of persons with disabilities.

[4] See A/HRC/15/37/Add.1.

[5] See judgment of the International Court of Justice dated 20 February 1969, in which the Court defined the requirements needed to establish new customary international law as very widespread, including representative State practice in support of the purported new rule, including the specially affected states, as well as a feeling to be obligated (opinio juris). See also https://swanthinkquestions.wordpress.com/2017/04/04/nuclear-weapons-advisory-opinion/.

expresses and reflects legal commitments under

as treaties, judicial decisions, principles and

10. The section below confirms that many of

already guaranteed by major international huma

significant normative strength, including through

national courts.

r the Charter of the United Nations, as well
tomary international law.

f the rights contained in the Declaration are
an rights instruments and have been given
h the work of the treaty bodies, regional and

III. International bodies implementin

ng the Declaration

A. United Nations treaty bodies and spec

cial procedures

11. The Declaration has strengthened the w

treaty bodies to pay particular attention to th

monitoring of human rights treaties. To some e

on the Elimination of Racial Discrimination, the

Committee on Economic, Social and Cultural R

Discrimination against Women, the Human Right

Persons with Disabilities, Committee against T

Committee on Enforced Disappearances, Subcom

Cruel, Inhuman or Degrading Treatment or P

Indigenous peoples can claim their rights in all

make explicit reference to those rights. Nonethe

restricted, as most indigenous peoples in the wor

many countries, they may also be unaware of the

protects their rights. Access to justice by indige

enjoyment of human rights and demands sp

initiatives from the various actors.

work of the United Nations human rights
he situation of indigenous peoples in the
extent, the 10 treaty bodies (the Committee
e Committee on the Rights of the Child, the
Rights, the Committee on the Elimination of
hts Committee, Committee on the Rights of
Torture, Committee on Migrant Workers,
mmittee on Prevention of Torture and Other
Punishment)[a] deal with indigenous rights.
all human rights treaties, but some treaties
theless, access to such bodies is still very
orld are not aware of their existence and, in
he Declaration and national legislation that
enous peoples is a significant issue for the
stronger communication and information

12. Under the reporting procedures of the two

Racial Discrimination has made the highest num

years (470), followed by the Committee on the R

Economic, Social and Cultural Rights (372),

Discrimination against Women (143), the Human

on the Rights of Persons with Disabilities (29),

Committee on Migrant Workers (2) and the Com

The number of recommendations made by the tre

to which indigenous rights are specifically menti

articles; the number of States that have ratified th

the extent to which indigenous peoples find into

caties, the Committee on the Elimination of
umber of recommendations in the past ten
Rights of the Child (232), the Committee on
), the Committee on the Elimination of
an Rights Committee (74), the Committee
), the Committee against Torture (23), the
ommittee on Enforced Disappearances (1).[b]
reaty bodies relates, inter alia, to: the extent
ntioned in the treaties or drawn from other
the treaty and have indigenous peoples; and
the treaty body process.

13. It is no surprise that the Committee on t

which specifically deals with the elimination o

the Elimination of Racial Discrimination,
of racial discrimination and has adopted

[a] The Committees monitor the implementation by States
treaties: the International Convention on the Elimination
Convention on the Rights of the Child; the International
Rights; the Convention on the Elimination of All Forms
International Covenant on Civil and Political Rights; the
Disabilities; the Convention against Torture and Other
Punishment; the International Convention on the Protec
Members of their Families; and the International Conv
Enforced Disappearance. The Subcommittee on Preven
Degrading Treatment or Punishment is a subcommittee

[b] The Committee on Enforced Disappearances has also
action procedure, including the cases of an indigenous
the Organización campesina de los pueblos indígenas
Lemun also brings up indigenous issues in its regu
detention.

s of the rights enshrined in the following
on of All Forms of Racial Discrimination; the
al Covenant on Economic, Social and Cultural
ns of Discrimination against Women; the
the Convention on the Rights of Persons with
r Cruel, Inhuman or Degrading Treatment or
ection of the Rights of All Migrant Workers and
vention for the Protection of All Persons from
ntion of Torture and Other Cruel, Inhuman or
e of the Committee against Torture
o considered indigenous issues under its urgent
us leader of the Yaqui nation, and the leader of
de Ayutla. The Subcommittee on Prevention of
ports following monitoring visits to places of

general recommendations and special measures on indigenous peoples, expounds greatly on the issue in the context of reporting. It advises States to implement recommendations of the Special Rapporteur on the rights of indigenous peoples to endorse the provisions of the Declaration and to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), thus contributing to the cross-fertilization of international law. The Committee on the Rights of the Child and Committee on Economic, Social and Cultural Rights make similar recommendations.

14. Treaty bodies often address indigenous people's rights under general non-discrimination articles. For example, the Human Rights Committee has dealt with access to social services, representation in public offices, negative stereotypes, hate speech, domestic violence, police violence, disappearance, overrepresentation in prison and many other such issues as they relate to indigenous peoples. Other relevant dimensions dealt with by the Committee under the rubric of protection of human rights defenders include trafficking, birth registration, the right to personal security and protection of activists for indigenous people's rights.

15. Some treaty bodies raise indigenous issues under articles specific to their rights. For example, the Committee on the Rights of the Child raises indigenous issues under article 30 of the Convention on the Rights of the Child, which makes a specific reference to indigenous children. The Human Rights Committee applies article 27 of the International Covenant on Civil and Political Rights, which refers to minority rights.[10] Under that article, the Committee addresses the impact of development projects and evictions on land rights and the welfare of indigenous peoples, through application of the principle of free prior and informed consent as the guiding norm for compliance with a State's duty to consult. For example, in its concluding observations on Thailand, the Committee stated, inter alia, that the State party "should ensure that prior consultations are held with a view to obtaining their free, prior and informed consent regarding decisions that affect them, in particular with regard to their land rights".[11]

16. Other recent issues raised under article 27 of the Covenant, relating to country-specific situations, involved: (a) the need for prompt demarcation of indigenous lands; (b) encouraging legislation recognizing indigenous land rights; (c) conferral of title recognition on a group as an indigenous people; (d) active protection of language; (e) effective access to land restoration processes; (f) the provision of adequate resources to indigenous representative bodies; (g) effective access to justice; (h) length of negotiations; (i) strengthening indigenous education and child and family services; (j) the protection of sacred areas; and (l) participation in law-making.

17. The treaty bodies deal with a range of civil, political, economic, social and cultural rights as they relate to indigenous peoples. Across the treaty bodies, recurring themes include: (a) concerns on self-identification; (b) access to justice; (c) lack of consultation and free prior and informed consent, including indigenous women, and often with respect to large-scale projects; (d) failure to safeguard the environment; and (e) access to and protection of lands, territories and resources. Certain developing issues of particular interest include the recommendation that States ensure respect by companies of the rights of indigenous peoples, even when acting outside the State;[12] that the Committee approve the efforts by States to promote self-determination for indigenous peoples;[13] and the review of indigenous institutions for compatibility with human rights norms.[14]

18. In the past 10 years, the Human Rights Committee has continued to contribute to a comprehensive body of jurisprudence on indigenous peoples through its individual communications procedure, under the Optional Protocol to the International Covenant on Civil and Political Rights. Through that procedure, it has dealt with a large number of communications on indigenous peoples, in particular relating to article 27 of the Covenant,

[10] See general comment No. 23 (1194) on the rights of minorities.

[11] See CCPR/C/THA/CO/2, para. 44.

[12] See CERD/C/NOR/CO/21-22, para. 24, and A/HRC/17/31.

[13] See CCPR/C/SWE/CO/7, para. 38.

[14] See CCPR/C/ECU/CO/6, paras. 37-38.

which relates to the rights of persons belonging to minorities to enjoy their culture, to profess and practise their religion or to use their language, as well as articles 26 (on non-discrimination) and 19 (on freedom of expression). In one particular case,[17] the Committee found a violation of the right of the author and other members of her group to enjoy her own culture following the diversion of water from the Aymara pasture land. The Committee found there had been no free prior and informed consent given for the project and no independent study on the impact of the construction of water wells. The State was required to provide the author with an effective remedy and reparation measures commensurate with the harm sustained.

19. The treaty bodies have continued to draft general comments on issues relating to indigenous peoples, some of which draw from the Declaration. In its general comment No. 21 (2009) on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights draws explicitly upon the Declaration and includes a section devoted to indigenous peoples' cultural rights. In its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the same Committee made explicit reference to numerous articles of the Declaration,[18] in particular those dealing with the rights to consultation and free prior and informed consent, land and resources, education, health, remedies, protection of the environment and cultural heritage. In its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee on the Rights of the Child urged States to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the Declaration.[17] The Subcommittee on Prevention of Torture made a statement on indigenous justice, drawing from language in the Declaration and ILO Convention No. 169, in which it recognized that indigenous peoples have the right to maintain and strengthen their own legal institutions and the right not to be subjected to forced assimilation or destruction of their culture.

20. Under its "Early-Warning" procedure,[19] the Committee on the Elimination of Racial Discrimination has considered several situations of indigenous peoples. For example, it considered the case of the Aru indigenous peoples in Indonesia[20] in relation to the granting of a permit for sugar cane plantations, and that of the Shor peoples in the Russian Federation[21] in relation to the destruction of the village of Kazas and possible destruction of the village of Chuvashka by mining activities. In May 2017, the Committee sent a letter under that procedure to the United States concerning allegations about the potentially discriminatory impact of the construction of a wall along the border between the United States and Mexico on the Kikapoo, Ysleta del Sur Pueblo and Lipan Apache indigenous communities.[21]

21. Recommendations from treaty bodies are ineffective if not implemented. While tracking follow-up to recommendations is a complicated task, the treaty bodies can track the implementation of some of their concerns through their follow-up procedures. For example, under the follow-up to the reporting procedure, the Human Rights Committee gave Finland an "A" grade (satisfactory implementation) for the measures taken to facilitate education for all Sami children in their own language in the territory of the State party.

---

[17] Communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 27 March 2009.

[18] Articles 10, 14, 19, 24, 26, 28-29 and 31-32.

[17] See also Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015) on women's access to justice and No. 34 (2016) on the rights of rural women, including the need for free prior and informed consent of rural women prior to implementing development projects. The Committee on the Rights of Persons with Disabilities is currently drafting a general comment on article 6 of the Convention on the Rights of Persons with Disabilities, on women with disabilities, including references to indigenous women.

[19] See www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx.

[20] See www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf.

[21] See http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_ALE_RUS_7906_E.pdf.

[21] See http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_8210_E.pdf.

22. States also often provide good follow-up to adverse findings under the individual communications procedures of the treaty bodies. For example, in one particular case,[23] Argentina paid $53,000 in compensation plus a monthly life pension and provided a property and a scholarship to an indigenous girl who was raped and subjected to discrimination on the basis of her gender and ethnicity. It also initiated compulsory training to prevent gender discrimination and violence against women. At its 1098th session, the Committee considered the implementation of that friendly settlement to be satisfactory.[24]

23. Many opportunities remain for the treaty bodies to be informed by the Declaration, a point recognized at the 2014 World Conference on Indigenous Peoples, at which participants called upon the treaty bodies to consider the Declaration in accordance with their respective mandates.[25] The Human Rights Committee, while dealing frequently with issues relating to the rights of indigenous peoples, has refrained from making explicit refers to the Declaration owing to the initial opposition by some Member States to its adoption. Given that the situation has now changed, perhaps it is time for the Committee to change that practice. Treaty bodies may consider cross-referencing their recommendations to contribute to the coherence and consistency on indigenous issues. In that regard, the Committee on the Elimination of Discrimination against Women may consider drafting a general recommendation on indigenous women and girls, the violence against whom is recognized as a global phenomenon.

24. The special procedures of the Human Rights Council also take up indigenous issues, in particular through the work of the Special Rapporteur on the rights of indigenous peoples.[26] Other special procedure mandate holders also take up issues related to indigenous peoples, including those dealing with the environment, housing, cultural rights, violence against women, transnational corporations and business enterprises, food, discrimination against women in law and in practice and extreme poverty.

25. In recent years, the issues raised by the special procedures have centred around the rights of indigenous peoples to consultation and participation in the issues that affect them; the precarious situation of indigenous peoples living in urban settlements; lack of citizenship of indigenous peoples as a barrier to access to water, food and other basic needs; discriminatory practices against women and girls, in particular in the implementation of laws on citizenship and nationality; and the adverse impact of business-related activities on indigenous peoples.

26. For example, the Special Rapporteur on extreme poverty and human rights presented a human rights-based framework for including people living in poverty in the design, implementation and evaluation of policies and programmes. The framework drew heavily on ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples, as they relate to consultation with and participation of indigenous peoples in decision-making processes.[27] The Special Rapporteur in the field of cultural rights, during a visit to Botswana, encouraged the Government to consult closely with the San people in relation to implications of the inclusion of the Okavango Delta on the World Heritage List of the United Nations Educational, Scientific and Cultural Organization (UNESCO).[28]

B. Universal periodic review

27. A total of 991 recommendations on indigenous peoples were made during the first two cycles of the universal periodic review. In its third cycle, initiated in May 2017, a considerable number of recommendations were made by the Working Group on the Universal Periodic Review regarding indigenous peoples' rights, including a recommendation to make reference to the situation of indigenous peoples in voluntary

[23] Communication No. 1610/2007, *L.N.P. v. Argentina*. Views adopted on 18 July 2011.
[24] See A/69/40 (Vol. I).
[25] See General Assembly resolution 69/2, para. 29.
[26] A/72/186.
[27] See A/HRC/23/36.
[28] See A/HRC/30/25, para. 68.

isolation, received by Ecuador.[28] Some countries have received numerous recommendations, including Australia, Canada, Chile, New Zealand and Paraguay. Those recommendations cover a broad spectrum of rights under the Declaration, including in support of the rights of indigenous peoples to: preserve their languages, lands and culture; reduce the negative impact on them from mining; adopt laws prohibiting discrimination against them; and guarantee the right to life and safety of human rights defenders.

28. Many of the recommendations of the Working Group were that States adhere to the Declaration and implement the recommendations and decisions of the treaty bodies and regional mechanisms. Including the Declaration as one of the standards on which the universal periodic review is based, as proposed by the Expert Mechanism in 2013,[29] would further enhance the implementation of the Declaration in that process. Under its amended mandate, the Expert Mechanism will have a role in providing Member States, upon their request, with assistance and advice for the implementation of recommendations made under the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms.[30] It is to be hoped that States, which have the principal responsibility for adopting legislative measures and public policies to implement the rights recognized in the Declaration (article 42) will take advantage of that new mandate to better implement recommendations and decisions of all human rights bodies. Indigenous peoples may also wish to take advantage of the new role of the Expert Mechanism and seek its assistance with respect to implementation.

29. The greater effort being made to ensure that recommendations are specific, measureable, achievable, relevant and time-bound is a positive step forward in the protection of indigenous peoples' rights and should assist implementation of recommendations. Under the universal periodic review procedure, States either "accept" or "take note" of the recommendations made. Implementation is effected through domestic measures, including the adoption of legislation or policies, which requires political and financial prioritization. States may have mechanisms through which indigenous peoples can participate when planning their budgets; some, such as Paraguay, do so through specific national action plans. National human rights institutions also play a key role in that regard.

30. As an example of implementation under the universal periodic review process, a growing number of African States are recognizing the existence of specific ethnic groups that self-identify as indigenous peoples, and are taking concrete commitments to address their situations. That was the case, for example, in Gabon in 2012, Namibia in 2011 and Uganda in 2011.[31] In addition, the Government of Namibia is currently drafting a white paper on indigenous peoples, in implementation of a commitment made under the review process. Some States have also taken action to improve consultation and participation with indigenous peoples, taken measures to try and improve violence against indigenous women and girls, and have pledged to ratify ILO Convention No. 169, following recommendations made during the review.[32]

31. It is difficult to see how the recommendations of international bodies can be pertinent, relevant and implementable without the participation of indigenous peoples affected by them. It would thus be important for States, United Nations specialized agencies and intergovernmental bodies to provide information, technical and financial support, without limiting the independence of indigenous peoples, to allow for the participation of indigenous peoples, including indigenous women, during the whole cycle of the universal periodic review process, special procedures activities and treaty bodies monitoring processes (see arts. 39 and 41 of the Declaration).

[28] See http://cdes.org.ec/web/llamado-de-atencion-de-onu-y-organizaciones-sociales-sobre-el-derecho-a-la-vida-de-los-pueblos-aislados/.

[29] See A/HRC/24/49, para. 11.

[30] See Human Rights Council resolution 33/25, para. 2 (d).

[31] See K. Broch Hansen, K. Jepsen and P. Leiva Jacquelin (eds.), *The Indigenous World 2017* (Copenhagen, April 2017), available from www.iwgia.org/iwgia_files_publications_files/0760_THE_INDIGENOUS_ORLD_2017_eb.pdf.

[32] See for example, the midterm reports of Argentina, Chile and Finland. Available from www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.

C. Regional mechanisms

32. In the past 10 years, indigenous peoples have availed themselves of the regional human rights bodies, such as the African and inter-American human rights systems, to develop and interpret rights, including by citing the Declaration. The cases below confirm that indigenous peoples' rights to their lands, territories and resources, as well as the norm of free prior and informed consent, are part of the corpus of binding international human rights law. This is also demonstrated by the citation of human rights law in national case law. It is disappointing that such persuasive jurisprudence remains poorly implemented.

33. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are leading the way on implementing the Declaration in Africa. To that end, they have made landmark decisions on the rights of indigenous peoples, especially in relation to their cultural rights and their rights to lands, territories and resources.

34. Two leading cases from the African system on land rights are worthy of mention. In the case of the *Endorois Welfare Council v. Kenya*[33] of 2 February 2010, the African Commission declared that the expulsion of the Endorois from their ancestral lands violated numerous human rights of the African Charter on Human and People's Rights, including the right to property, culture, disposal of wealth and natural resources. It ordered Kenya to restore the Endorois to their historic land and to compensate them. That was the first time that African indigenous peoples' rights over traditionally owned land had been legally recognized and the first ruling of an international tribunal on a violation of the right to development. In its judgment, the African Commission drew on articles 8 (2) (b), 10 and 25-27 of the Declaration, as well as the *Saramaka* case from the Inter-American Court of Human Rights (see para. 39 below).

35. In the case of *African Commission on Human and Peoples' Rights v. Republic of Kenya (the Ogiek case)* of 26 May 2017,[34] which also related to expulsions, the Court found similar violations against Kenya as in the *Endorois* case.[35] That was one of the first cases of the Court and its first decision on the rights of indigenous peoples. In its judgment, the Court drew on articles 8 and 26 of the Declaration and general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life. Those cases should contribute to a better understanding and greater acceptance of indigenous rights in Africa and be an incentive to all States to involve indigenous peoples in the development process.

36. Under their reporting procedures, both the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have advised Kenya to implement the decision in the *Endorois* case and the Committee on the Elimination of Racial Discrimination recently noted its concern in response to reports of ongoing forced evictions of the Ogiek peoples.[36] This interplay between the regional and international human rights bodies demonstrates the positive effect that such cooperation can have on the coherence and consistency of international human rights law for the benefit of indigenous peoples.

37. While it may be a little early to expect the *Ogiek* case to be implemented, it is unfortunate that, after more than seven years, the *Endorois* case remains unimplemented. The Office of the United Nations High Commissioner for Human Rights (OHCHR) is playing its part in trying to ensure implementation of the cases and organized a workshop in Nakuru, Kenya, in August 2016, with the senior human rights adviser in Kenya to enhance dialogue between all stakeholders. At the meeting, participants discussed a co-management

[33] See www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf.

[34] See http://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples'%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf.

[35] Despite an allegation relating to the right to life, the Court found no violation of the requisite article, (art. 4).

[36] See CERD/C/KEN/CO/1-4, CERD/C/KEN/CO/5-7 and E/C.12/KEN/CO/2-5.

plan process for Lake Bogoria and adopted a roadmap, including key recommendations and ways forward.

38. Apart from its decisions, the African regional human rights mechanisms contribute to achieving the goals of the Declaration in other ways, including through resolutions on climate change and World Heritage Sites in Africa; participation in the World Conference on Indigenous Peoples; and active participation in reviewing the World Bank Environmental and Social Framework.

39. The inter-American human rights system has made important contributions to the development of international law on indigenous rights, citing the Declaration, adding value, legal analysis and further legitimizing its contents. In the case of *Saramaka People v. Suriname*,[37] of November 2007, the Inter-American Court of Human Rights decided that, although the Saramakas were not an indigenous community, they had certain resemblances with traditional indigenous communities and therefore enjoyed the same rights. As a consequence, they did not need a title in order to own the lands (i.e., possession was sufficient).

40. While that judgment appears to have been partially implemented,[38] the most crucial measures concerning new legislation, non-repetition and the granting of a title do not appear to have been realized. Worryingly, it is reported that Suriname has continued to grant new concessions within the Saramaka community's territory since the judgment was rendered.[39] In 2015, the Committee on the Elimination of Racial Discrimination communicated its concern to Suriname about the lack of implementation of the most essential parts of the judgment.[40] The Court continues to supervise the full implementation of its decision.

41. In *Xákmok Kásek v. Paraguay*, of 24 August 2010,[41] relating to the expulsion of an indigenous community, the Court found several violations of the American Convention on Human Rights. The case strengthens the Court's position on the existence of a right to property of indigenous peoples under certain circumstances without official title, and confirmed its jurisprudence on the relationship between land and the survival of a community when the land is used for economic, cultural, social or religious purposes. The Court also recognized a relationship between the right to life and the rights to water, education and food, among others. Disappointingly, it would appear that the Kásek community of Paraguay was only able to re-occupy their respective historic lands by force.[42]

42. In *Kichwa Indigenous People of Sarayaku v. Ecuador*,[43] following damage caused by a company (contracted with the State) conducting seismic exploration on Sarayaku lands, the Inter-American Court of Human Rights found numerous violations of the American Convention on Human Rights. Notably, it reiterated its jurisprudence that consultations should be undertaken with good faith, through culturally adequate procedures, with the aim of reaching an agreement, and the consultation should be prior, informed and culturally appropriate. It established that consultation was the duty of the State and could not be delegated to third parties. In its deliberations, the Court made reference to articles 15 (2), 17 (2), 19, 30 (2), 32 (2), 36 (2) and 38 of the Declaration.

43. In *The Maya Leaders Alliance v. The Attorney General of Belize*,[44] the Caribbean Court of Justice affirmed the rights of the Mayan indigenous communities over their traditional lands and indicated that no concessions should be granted for exploitation of

[37] See www.worldcourts.com/iacthr/eng/decisions/2008.08.12_Saramaka_v_Suriname.pdf.

[38] See www.escr-net.org/caselaw/2014/case-saramaka-people-v-suriname.

[39] See CCPR/C/SUR/CO/3, para. 47.

[40] See CERD/C/SUR/CO/13-15, para. 29.

[41] See www.worldcourts.com/iacthr/eng/decisions/2010.08.24_Xakmok_Kasek_v_Paraguay.pdf.

[42] See Open Society Justice Initiative, "The Impacts of Strategic Litigation on Indigenous Peoples' Land Rights" (Nairobi, 21-22 June 2016). Available from www.opensocietyfoundations.org/sites/default/files/slip-landrights-nairobi-20161014.pdf.

[43] See www.escr-net.org/sites/default/files/Court%20Decision%20_English_.pdf.

[44] See www.elaw.org/system/files/bz.mayaleaders_0.pdf.

natural resources without the consent of the concerned indigenous peoples. In arriving at its decision, the Court made reference to articles 26-28 of the Declaration, indicating that, although it was not binding, the Declaration was relevant for the purposes of interpreting the Constitution of Belize as it related to indigenous rights.

D. United Nations agencies and other multilateral actors

44. OHCHR continues to engage with indigenous peoples to support implementation of the Declaration, through its field offices. For example, the OHCHR office in Guatemala, along with the United Nations Voluntary Fund for Victims of Torture, provided support to indigenous women in a landmark 2016 case in which a Guatemalan court recognized as a crime against humanity the sexual violence committed against indigenous women of the village of Sepur Zarco during the internal armed conflict in the 1980s. Recognition of indigenous peoples' rights and their inclusion and participation in the review of the United Nations Development Assistance Framework and/or workplans by all country offices, in line with the Declaration/ILO Convention No. 169, would ensure a more robust approach to indigenous issues across the United Nations system.

45. As well as the Expert Mechanism, the other two United Nations mechanisms supporting indigenous peoples — the Permanent Forum and the Special Rapporteur on the rights of indigenous peoples — provide important guidance and recommendations to all stakeholders in the implementation of the Declaration. The coordination between them is a good example of a coherent approach to the implementation of indigenous rights. This includes the participation of the Special Rapporteur in the sessions of the mechanisms, allowing for parallel meetings with indigenous peoples' representatives and others, joint statements and coordination meetings. Even closer collaboration will be required as the Expert Mechanism develops its new mandate. Partnerships with national human rights institutions, which have become increasingly important in helping to achieve the aims of the Declaration, should be further encouraged in this context.

46. In 2014, Member States reaffirmed their support for the Declaration at the World Conference on Indigenous Peoples, the outcome document of which[45] contains many commitments, two of which are of particular significance. One commitment culminated in the General Assembly consultation process aiming to enhance the participation of indigenous peoples' representatives in meetings of United Nations bodies on issues affecting them. Those consultations are ongoing and have so far produced a draft resolution that is currently before the General Assembly, and the appointment of indigenous co-facilitators in the Conference. However, additional work is required to ensure all bodies and organizations throughout the United Nations system enable the participation of indigenous peoples' own representatives and institutions in relevant meetings on issues affecting them.

47. The second significant commitment made by States through the United Nations relates to the preparation of national action plans to implement the Declaration. While some States have developed sector-specific national strategies relating to indigenous peoples,[46] to date only a small number of States, including El Salvador and Paraguay, appear to be developing specific action plans for indigenous peoples. It is relevant to note that the Paraguayan national action plan also makes reference to the protection of indigenous peoples in voluntary isolation, an issue on which OHCHR published guidelines in 2012 reflecting Declaration rights. It is difficult to see how States can comprehensively realize the full set of Declaration rights without an action plan that covers all the articles in the Declaration, or without taking into account the findings and recommendations of international human rights mechanisms, or without the participation of all sectors of indigenous people's society.

48. A further element to come out of the World Conference on Indigenous Peoples was a request that the United Nations develop a system-wide action plan on indigenous peoples to develop a coherent approach to achieving the ends of the Declaration. In 2011, ILO,

[45] General Assembly resolution 69/2, annex.

[46] Australia, Finland, New Zealand and the Philippines.

together with OHCHR and UNDP, launched the United Nations Indigenous Peoples' Partnership, which presently also includes the United Nations Children's Fund, the United Nations Population Fund and UNESCO. An action plan was introduced to indigenous peoples and Member States at the fifteenth session of the Permanent Forum in May 2016. Since then, there has been a media and awareness-raising campaign as well as a mapping of guidelines, policies and manuals relating to indigenous issues across the United Nations system. The Partnership has been involved in inception-phase projects that have been implemented in six countries across Africa, Latin America and Asia. The 2015 ILO strategy for action concerning indigenous and tribal peoples commits it to contribute actively to this system-wide action plan. Since 2007, five additional countries have ratified the Convention (the Central African Republic, Chile, Nepal, Nicaragua and Spain).

49. Other United Nations agencies have also implemented the Declaration, such as the International Fund for Agricultural Development, which has adopted a policy engagement with indigenous peoples and established a permanent indigenous peoples forum and a specific grant mechanism called the "Indigenous Peoples Assistance Facility". At the country level, it has engaged in policy dialogues in implementation of the Declaration across Latin America, Asia and Africa.

50. The engagement of indigenous peoples in negotiations for the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change was a step in the right direction to help adhere to the Declaration. Unlike the Millennium Development Goals, the Sustainable Development Goals make explicit reference to indigenous peoples' development concerns and are founded on principles of universality, human rights, equality and environmental sustainability — core priorities for indigenous peoples. However, some of the main priorities for indigenous peoples are not reflected in the 2030 Agenda, such as the principle of free prior and informed consent, the right to self-determined development, legal recognition of indigenous peoples and their individual and collective rights. Implementation of the Sustainable Development Goals should be culturally sensitive, involve full participation of indigenous peoples and respect fully the Declaration. The treaty bodies may consider requesting disaggregated data and statistics that could be used to measure progress relating to indigenous peoples across the Goals.

51. On 4 August 2016, after extensive consultations, the World Bank Board of Directors approved a new set of environmental and social safeguards, including a specific environmental and social safeguard on indigenous peoples and the historically underserved traditional local communities of sub-Saharan Africa, in order to ensure that World Bank-funded development projects do not harm indigenous peoples and the environment. It will be launched in 2018 to replace its existing operational policy on indigenous peoples, which requires borrowing countries to ensure any World Bank-funded project does not harm indigenous peoples' rights and includes the norm of free prior and informed consent. The new standard should be applied consistently and without waivers, such as the one granted by the World Bank in 2016 to the United Republic of Tanzania with respect to the "Southern Agricultural Growth Corridor of Tanzania" project, which prompted strong condemnations from the Special Rapporteur, the African Commission on Human and Peoples' Rights and indigenous peoples. It is to be hoped that no further waivers will be granted in the future.

52. The World International Property Organization (WIPO) and UNESCO are working on measures relating to indigenous peoples' cultural rights, as protected under the Declaration. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is undertaking negotiations with the objective of reaching agreement on international legal instrument(s) towards the protection of traditional knowledge, traditional cultural expressions and genetic resources. Trademark, copyright and patent laws, for example, all incentivize innovation by rewarding the individual inventor or creator with monopolies over their products, with financial benefits. By contrast, the cultural expressions and traditional knowledge of indigenous peoples are often created collectively, passed down orally among generations, and may in some instances be undertaken for spiritual rather than economic purposes.

53. As articulated by representatives of indigenous peoples at the thirty-third session of the WIPO Intergovernmental Committee, held in June 2017, it is imperative that any further

negotiations of instruments by the Committee process be guided by a human rights approach that acknowledges the self-determination of indigenous peoples, as well as their rights to culture, religion, spirituality and language, as defined by their own laws and customs. There should be coordination between WIPO negotiations and work by UNESCO toward the protection of other aspects of indigenous peoples' cultural heritage. Consistent with the reports of the Special Rapporteur in the field of cultural rights, the intentional destruction of indigenous peoples' cultural heritage must be stopped. The WIPO and UNESCO processes must also work to protect rights to language, speech and education, consistent with the Declaration.

54. The UNESCO Medium-Term Strategy for 2014-2021 commits it to implement the Declaration across all relevant programme areas. In 2011, within the framework of the tenth anniversary of the Universal Declaration on Cultural Diversity and the celebration of World Science Day for Peace and Development, UNESCO decided to embark on a process to elaborate a policy on engaging with indigenous peoples.[47]

55. The draft policy recognizes both collective and individual rights, includes human rights language, refers to the system-wide action plan and respects cooperation with United Nations mechanisms on indigenous peoples' rights. However, it could be more explicit on the cross-cutting character of culture for the implementation of other rights and, on the issue of education, could state a clearer position toward the recognition of indigenous peoples' own education systems. The policy could include proposals to strengthen the implementation of UNESCO instruments that affect indigenous peoples and should be explicit in respecting the principle of free prior and informed consent. The policy could also reflect the implementation of the outcome document of the World Conference on Indigenous Peoples, articles 11 and 12 of the Declaration and how existing legally binding instruments can best serve as tools for the repatriation of ceremonial objects and human remains of indigenous peoples.

56. The role of UNESCO as a leading agency to prepare for and implement the International Year of Indigenous Languages in 2019, proclaimed by the General Assembly, should be supported by all stakeholders in the United Nations system and beyond.

IV. Domestic courts and national bodies

57. There are many ways domestically in which the Declaration is implemented in States, through the courts and other bodies, including national human rights institutions and legislatures. In the past 10 years, in some regions, national courts have been instrumental in the application of Declaration rights and regional and international treaties, as they relate to indigenous peoples, in particular with respect to ownership of land, territories and natural resources. In 2007, in the case of *Aurelio Cal, et al.*,[48] the Supreme Court of Belize invoked the Declaration when interpreting the country's Constitution to protect the right of the Mayan people to their traditional lands. The Chief Justice stated, inter alia, that he found article 26 of the Declaration to be "of special resonance and relevance in the context of the case, reflecting the growing consensus and the general principles of international law on indigenous peoples and their lands and resources. He also referred to articles 42 and 46 of the Declaration to support his premise that the State had an obligation to respect the Mayan right to their lands. He ruled that the Mayan communities of Conejo and Santa Cruz held customary titles to their lands and ordered the Government to respect and demarcate their territory.

[47] See www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/ADG-SC-IntMtg-IPPolicy_PPT_12-7-17_9h30.pdf.

[48] See www.elaw.org/es/content/belize-aurelio-cal-et-al-v-attorney-general-belize-supreme-court-belize-claims-no-171-and-17. In 2008, the Committee on the Elimination of Racial Discrimination wrote to Belize following the case under its early warning procedure. See www.law2.arizona.edu/depts/iplp/outreach/maya_belize/documents/CERDLetterBelize070308.pdf.

58. Even in draft form, the Declaration has been applied. In the 2006 case of *Roy Sesana and others v. Attorney General of Botswana*,[49] the Court used the draft Declaration to rule in favour of the Basarwa (San) indigenous peoples, who were being evicted from their ancestral lands without their consent and unlawfully, and to rule that the refusal to allow them to return had been unconstitutional.

59. Similarly, in the case of *Lemeiguran v. Attorney General and ors*, relating to the IL Chamus people, where the applicant indigenous peoples claimed a violation of their constitutional right to participate in decision-making through elections, a Kenyan court ruled in favour of the applicant, on the basis of several provisions in the draft Declaration.

60. On 3 April 2014, the Supreme Court of Belize[50] ruled that permits that had been granted to an oil company for drilling and road construction had been unreasonable and unlawful. It decided that, having voted in favour of the Declaration, the State was clearly bound to uphold the general principles of international law contained therein. It confirmed that the Government had an obligation to recognize the collective land ownership of the concerned communities and also to obtain their free prior and informed consent before awarding concessions on their territories within the meaning of article 32 (2), as defined by the Special Rapporteur on the rights of indigenous peoples.[51]

61. In 2009, the Supreme Court of Chile[52] invoked indigenous peoples' right to protection of the environment in granting a petition for protection on the grounds that a forestry company had adversely affected the wetlands of the Mapuche community. In its decision, it referred to article 29 of the Declaration to the extent that indigenous peoples have the right to conservation and protection of the environment.

62. In the *Independencia aqueduct* case, the Supreme Court of Mexico in 2012[53] ordered the State to consult with the Yaqui tribe to determine whether the construction of the Independencia aqueduct, for the purposes of carrying water from the Yaqui river to the city of Hermosillo, would cause any irreversible damage. If so, construction should be stopped. The Court relied on article 19 of the Declaration, ILO Convention No. 169 and the decision in the *Sarayaku* case (see para. 42 above). It held that prior consultation should be culturally appropriate, informed and conducted in good faith. This was the first time in Mexico that inter-American standards regarding the indigenous communities' right to consultation had been acknowledged by the Supreme Court. Unfortunately, enforcement of the decision has been slow.

63. In *Álvaro Bailarín et al.*, in 2011,[54] the Constitutional Court of Colombia ruled that, for development plans (in this case exploration and extractive activities of mineral resources) that have a major impact on indigenous territories, the State must not only consult with indigenous peoples but must also obtain their free prior and informed consent. In its decision, it made a reference to the State's obligations to abide by international law, including the Declaration.[55]

64. Several courts in Canada have cited the Declaration, including the *Batchewana* case, in 2017,[56] where a judge of the Ontario Court of Justice, ruled that the Crown must pay the legal fees of the defendants (from the Batchewana First Nation) in a criminal case after the Government withdrew nearly eight-year-old charges against indigenous men who had been

[49] See www1.chr.up.ac.za/index.php/browse-by-country/botswana/1118.html.

[50] The Supreme Court of Belize, A.D. 2014, Claim No. 394 of 2013: http://www.belizejudiciary.org/web/wp-content/uploads/2014/01/Supreme-Court-Claim-No-394-of-2013-Sarstoon-Temash-Institute-for-Indigenous-Management-et-al-v-The-Attorney-General-of-Belize-et-al-.pdf.

[51] The Court referred to A/HRC/12/34, paras. 62-63 and 72.

[52] See www.politicaspublicas.net/panel/jp/462-2009-linconao.html.

[53] See www.escr-net.org/caselaw/2013/amparo-no-6312012-independencia-aqueduct.

[54] See Judgment No. T-129 of 3 March 2011. Available in Spanish from www.corteconstitucional.gov.co/relatoria/2011/T-129-11.htm.

[55] It did not specify any particular rights of the Declaration in the decision.

[56] See www.supremeadvocacy.ca/wp-content/uploads/2017/02/R-v-Sayers-Robinson-Swanson-Robinson-2017-OCJ-web.pdf.

logging on Crown land. The judge relied on the Declaration (arts. 3, 8 (2) (b), 20, 28, 32 and 40), which he indicated had been adopted by Canada on 10 May 2016.

65. In the case of *Hamilton Health Services Corp. v. H. before the Ontario Court of Justice (2015)*, the Attorney General's decision to dialogue with the parties about an Aboriginal family's desire to use traditional medicine in treatment of their daughter's health condition was considered consistent with article 24 of the Declaration. Also, in the 2017 case of *R. v. Francis-Sioms*, the Ontario Court of Justice's use of restorative justice in sentencing proceedings for an aboriginal offender in a drug-related case was consistent with articles 5 and 11 of the Declaration.

66. The Constitutional Court of Guatemala handed down a number of judgments suspending activities of hydroelectric and mining companies for lack of consultation with indigenous peoples, specifically referring to articles 32 (2) of the Declaration.

67. On 21 October 2016, the Constitutional Court of the Republic of Sakha (Yakutia)[37] in the Russian Federation, in the context of clarifying the meaning of article 42 of its Constitution, held that it should be understood as providing, "the complete set of natural collective rights of the indigenous people of Yakutia" and provided for their "territorial unity, socioeconomic, state, legal, national, cultural and linguistic identity". It stated that article 42 was intended to "guarantee the preservation and rebirth" of the indigenous peoples of that Republic. It cited the Declaration as a conscious statement of *inalienable rights of indigenous peoples.*

68. Many of the national and regional court cases presented in the present section come from States in Latin America, the Caribbean, North America and Africa and relate, in particular, to land rights and natural resources, consultation and consent. The implementation of the cases has had varying degrees of success. In other States, there has been little or no domestic case law referring to the Declaration. The application of ILO Convention No. 169 by some States can go a long way to implementing the rights in the Declaration but does not obviate the obligation to apply the latter fully. In many States, indigenous peoples have advocated the implementation of Declaration rights through national agreements, legislation, policy and regional agreements.

69. In several countries, including Indonesia, Malaysia and the United States,[38] as well as in several regions of the Russian Federation, national human rights institutions, including Ombudsman offices, which fulfil that role in some States (e.g. Namibia), use the Declaration as a framework for monitoring the implementation of indigenous peoples' rights at the national level. Given the often inaccessibility of the court system to indigenous peoples, those institutions are often more approachable in terms of resolving problems. Some institutions, such as those in Australia and New Zealand, include indigenous rights commissioners who are specialists on these issues, who reinforce implementation of the Declaration.

70. Legislatures also contribute to the implementation of the Declaration, including in Indonesia, where legislation on the environment recognizes implicitly certain rights of the peoples, referred to as *Masyarkat Adat* or *Masyarakta Hukum Adat* (customary societies).[39] Also, in one of the Arctic regions in the Russian Federation, socio-cultural impact assessments are mandatory by law prior to undertaking industrial projects, and form part of the process of eliciting the free, prior and informed consent of indigenous peoples.[40] In 2007 the Plurinational State of Bolivia enacted a law incorporating the Declaration into the country's national legislation. Further laws were enacted in 2010 for the purposes of

[37] See decision No. 4-П of the Constitutional Court of the Republic of Sakha (Yakutia), Russian Federation, available in Russian from https://ks-sakha.gov.ru/uploads/ckfinder/userfiles/files/Постановление%2030%204-2016.pdf

[38] In the United States, the Navajo Nation Human Rights Commission has cited the Declaration in cases addressing the Navajo people's human rights to religious freedoms, sacred sites, housing, education, water, natural resource development and freedom from discrimination on the basis of race, sex, sexual orientation and gender identity.

[39] Agrarian Reform Act No. 27/2007 and Act No. 32/2010.

[40] See http://arran.no/sites/arran.no/files/arran_lule_ambro_expert_review_paper8_web.pdf.

building the creation of a plurinational State, including provisions on the rights of indigenous peoples recognized in the Declaration. In New Zealand, in 2016, the Maori Language Act was enacted aimed at revitalizing the Maori language.

71. Domestic policies also support implementation. In Cambodia, a 2009 policy on the registration of and the right to use the land of indigenous communities bolstered the 2001 Cambodian Land Law, which had laid the ground for community land titling among indigenous communities. In several African countries, ministries in charge of climate change programmes have taken on board key provisions of the Declaration, including on consultation. In Canada, in its final report,[41] the Truth and Reconciliation Commission issued numerous calls to action to use the Declaration as a framework for reconciliation, and, early in 2017, the Government of Canada assembled a working group of ministers to review all federal laws and policies as they related to indigenous peoples in line with the Declaration and supporting the implementation of the Commission's calls to action.

72. In New Zealand, the Whanganui River Deed of Settlement (Ruruku Whā) (upheld) was passed, creating legal recognition of the Whanganui River as a legal person with its own personality and all of the rights, duties and liabilities associated with that. In the United States, several federal-level executive agencies have expressed intent to comply with the Declaration, including in the area of consultation regarding indigenous peoples' sacred sites located on public lands.

73. Indigenous peoples have also mobilized themselves internally. For example, in Brazil, indigenous peoples drafted their own protocol for consultation and consent. Other such protocols are in the pipeline, including by the Wajãpi, Munduruku and the Xingu peoples. In Peru, the Wampis established an autonomous territorial government. In the United States, a number of American Indian tribal governments have taken measures to implement the Declaration, including the Muscogee (Creek) Nation, which translated substantial portions of the Declaration into the Muscogee language. Also in the United States, the Principal Chief and National Council Speaker of the Muscogee Creek Nation signed its own Declaration on the Rights of Indigenous Peoples in 2016. Several tribal governments, including the Pit River Tribe and Gila River Tribe, have enacted legislation endorsing the Declaration. Indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation, at their eighth assembly, adopted its own strategic programme, entitled "Indigenous 2021: Land, Tradition, Future".[42] Furthermore, at its seventh meeting, the Congress of Finno-Ugric Peoples endorsed a resolution on sustainable development.[43] Both of these documents reflect many articles of the Declaration. In New Zealand, the Maori have their own monitoring initiative in implementing the Declaration.

74. Despite these many good practices, indigenous peoples in some regions, including a number of States in Asia and Africa, still struggle for legal recognition and respect for self-determination. Without recognition of their status as indigenous peoples, it is difficult to see how they can claim their rights to their lands and territories, which, in turn, are inextricably linked to their culture, way of life and livelihood. These remain contentious issues in many States. States should refrain from hindering or limiting self-determination initiatives and should recognize and learn from indigenous peoples' own initiatives to advance the implementation of the Declaration at the national level.

V. New regional instruments and agreements on indigenous rights

75. The Declaration has contributed to the elaboration of regional agreements on indigenous rights. In 2016, the Organization of American States[44] approved the American Declaration on the Rights of Indigenous Peoples. Importantly, that Declaration recognized the fundamental rights of indigenous peoples to self-determination, to their ancestral

[41] Available from www.trc.ca/websites/trcinstitution/index.php?p=3.

[42] Available in Russian from www.raipon.info/documents/Docs_RAIPON/HIP%202021-1.pdf.

[43] See www.fuvcongress.org/upload/files/FU/resolutions/176/2016_1.pdf.

territories and to consultation and free, prior and informed consent. It also recognized the principle of non-forced contact to those indigenous peoples living in isolation. However, some fear that, in some respects, it may fall short of meeting the standards already set in other international instruments and those developed by the regional human rights institutions.[16] Thus, it should be read in conjunction with other international instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

76. On 13 January 2017, a group of negotiators representing the Governments of Finland, Norway and Sweden and the three Sámi parliaments of those countries finalized the negotiations on a draft Nordic Sámi convention. The draft convention included joint Nordic approaches to safeguarding and strengthening Sámi right to self-determination, including rights to lands and resources, Sámi traditional livelihoods, language, culture and education, and confirmed that the Sámi people should have their own representative political bodies, the Sámi Parliaments. According to the draft convention, the Sámi Parliaments should give their consent to the draft convention. One of the issues that remain unclear is whether the draft convention broadens the definition of Sámi persons eligible to vote in Sámi Parliament elections to the extent that it will also include non-indigenous persons. Assuming all three countries' Sámi Parliaments and the national legislative assemblies in Finland, Norway and Sweden consent to the agreement, it will come into force in autumn 2019. That convention may be of interest to indigenous peoples worldwide, especially where indigenous people are scattered across several countries, such as the Maya, who live in Belize, Guatemala and Mexico.

77. In May 2017, the revised Deatnu/Tana agreement between the governments of Finland and Norway caused protests from the local Sámi fishing rights holders and the Sámi Parliaments. While the agreement includes a reference to the Declaration as part of its legal framework for the agreement, both Sámi Parliaments claim that it came into force without their free, prior and informed consent.

---

[16] See www.ohchr.org/en/issues/ipeoples/srindigenouspeoples/pages/srindigenouspeoplesindex.aspx.